SUPREME COURT U. S.

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In The Supreme Court Of The United States

October Term, [redacted] 1969

No. [redacted] 39

RICHARD HALL AND CHRISTINE HALL,

Appellants

v.

HARRIET BEALS, Clerk and Recorder of El Paso County, and BESS TITUS, Election Supervisor of El Paso County,

Appellees

ON APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

MOTION TO DISMISS OR AFFIRM UNDER RULE 16

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MOTION TO DISMISS OR AFFIRM

Appellees move the Court to dismiss the appeal herein, or to affirm the judgment sought to be reviewed on the appeal,

on the following grounds:

I. IT IS MANIFEST THAT THE QUESTIONS ON WHICH THE DECISION OF THIS CAUSE DEPENDS ARE SO UNSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT.

The questions presented by appellants would be substantial in a de novo setting, but it has long been settled that the various States have the power to prescribe reasonable and nondiscriminatory qualifications for voting in federal (including presidential) as well as state elections. Constitution of the United States, Article II, Section 1; Minor v. Happersett, 21 Wall. 162, 177, 22 L. Ed. 627 (1875); Pope v. Williams, 193 U.S. 621, 632-633 (1904); Lassiter v. Northampton County Board of Elections, 360 U.S. 45, 50-51 (1959); Drueding v. Devlin, 234 F. Supp. 721 (D. Md. 1964), aff'd per curiam, 380 U.S. 125 (1965); Carrington v. Rash, 380 U.S. 89, 91 (1965); Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966).

Specifically, this Court has recently upheld, per curiam, the reasonableness of a one-year residency requirement of the State of Maryland prerequisite to voting in elections for President and Vice-President of the United States. Drueding v. Devlin, 234 F. Supp. 721 (D. Md. 1964), aff'd per curiam, 380 U.S. 125 (1965). In Drueding, a Three-Judge Federal District Court and this Court were faced with the

identical questions here presented. The facts, except for names and dates, are identical to those in the instant case. It, therefore, must be considered controlling as to the disposition of this case. The Three-Judge Federal District Court, below, so held. A fortiori, since the Colorado residency requirement, in voting for President and Vice-President, is only six months rather than Maryland's one year, the Colorado residency statute is certainly reasonable.

Drueding remains the law as to the questions presented in this case as there has been nothing to mollify its impact since it was affirmed per curiam by this Court in 1965.

a. The "equal protection" argument.

As to this argument appellants cite only two cases decided since Drueding, i.e., Harper v. Virginia Board of Elections, 383 U.S. 663 (1966); and Williams v. Rhodes, 37 U.S. L. Week 4001 (October 15, 1968). Both can be clearly distinguished.

First, Harper, itself, states, by way of dictum, that the states have the power to fix voter qualifications within the constitutional framework. (Emphasis supplied). It quotes Lassiter v. Northampton Election Board, 360 U.S. 45, 51 (1959), to this effect at 383 U.S. 665. Also, the Court in Harper, states:

> "Thus without questioning the power of a State to impose reasonable residence restrictions on the availability of the ballot (see Pope v. Williams, 193 U.S. 621) . . . ." 383 U.S. 663, at 666.

Finally, Harper deals with a subject clearly distinguishable from state residence requirements, i.e., the poll tax. Harper, therefore, is clearly inapplicable to the instant case.

Second, Williams v. Rhodes, 37 U.S. L. Week 4001 (October 15, 1968), can be clearly distinguished because it applies to a subject area wholly separate and apart, i.e., political Parties being listed on a Presidential ballot. It is interesting to note that this Court stated in its majority opinion:

> "And as we have said, the State is left with broad powers to regulate voting, which may include laws relating to the qualification and functions of electors." Id at 4004.

In conclusion, there is nothing contained in appellants' "equal protection" argument to lessen the controlling force of Drueding in the instant case.

b. The "privileges and immunities" argument

In this argument, appellants cite a number of cases decided since Drueding which they contend mollify the controlling impact of Drueding on the instant case. Appellees vigorously differ with their contentions for the following reasons. Appellants' cited cases will be taken in order:

The welfare residency cases are clearly distinguishable. For example, Green v. Department of Public Welfare, 270 F. Supp. 173 (D. Del. 1967), specifically distinguishes Drueding in stating:

> "But certainly it takes little logic to conclude that the need for food, clothing and lodging has an aspect of immediacy which differentiates it in kind from the right to vote," Id. at 178.

Also, Thompson v. Shapiro, 270 F. Supp. 331 (D. Conn. 1967), interestingly distinguishes welfare residency from voting residency by quoting Carrington v. Rash, 380 U.S. 89, 96 (1965):

> "Texas is free to take reasonable and adequate steps *** to see that all applicants for the vote actually fulfill the requirements of bona fide residence." 270 F. Supp. at 338

Then, appellants cite United States v. Classic, 313 U.S. 299 (1941), to the effect that the right to vote for federal Congressmen is clearly a right of national citizenship. This is undisputed, but it must be pointed out that Classic clearly states that this right springs from Article I, Section 4, of the Constitution of the United States and not from the Fourteenth and Fifteenth Amendments. Id. at 315. It is submitted therefore that appellants' cite of Classic in conjunction with their "privileges and immunities" argument is inappropriate. Likewise with United States v. Original Knights of the Ku Klux Klan, 250 F. Supp. 330 (D. La. 1965), also relied upon by appellants. Id. at 352, 354.

Finally, appellants cite United States v. Buck, 18 F. Supp. 213 (D.C. Mo. 1937). This is clearly inappropriate because on appeal, reported as Walker v. United States, 93 F.2d 383 (8th Cir. 1937) (cited incorrectly by appellants as 93 F.2d 385), it was held:

> "Manifestly, the right to vote for presidential electors depends directly and exclusively on state legislation," Id. at 388, 389.

thereby reversing the lower court, as to Count I of the conspiracy. Certiorari was denied by this Court at 303 U.S. 644 (1937). Clearly, therefore, United States v. Buck, Id., on appeal, reported as Walker v. United States, Id., does not support appellants' argument.

In conclusion, there is nothing contained in appellants' "privileges and immunities" argument to lessen the controlling impact of Drueding on the instant case.

Clearly, therefore, the Colorado residency statute is neither in violation of the equal protection clause nor the privileges and immunities clause of the Fourteenth Amendment. No new substantial question is therefore raised by the appellants which requires further argument in this Court.

II. THE ISSUES ALREADY HAD BECOME MOOT PRIOR TO THE ENTRY OF APPEAL IN THIS COURT.

Appellants filed their notice of appeal to this Court on December 13, 1968. The Presidential Election, as to which relief was sought, occurred on Tuesday, November 5, 1968. The issues, therefore, had become moot prior to appeal to this Court. This Court in Mills v. Green, 159 U.S. 651 (1895) aptly settled this same question by stating:

> "The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried

> into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal."

In conclusion, the appellants now have fulfilled the six-month residency requirement of the State of Colorado, and are therefore fully eligible, in this respect, to vote in the next Presidential Election scheduled for November, 1972, Appellants, therefore, are no longer adverse parties with sufficient legal interests to maintain this litigation on appeal.

This appeal should therefore be dismissed for mootness, and the judgment below should be allowed to stand unmodified.

III. CONCLUSION

For the foregoing reasons, this appeal should be dismissed, or the judgment sought to be reviewed on the appeal should be affirmed.

Respectfully submitted,

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